

system within the broadcast station's "Grade B contour," typically 40-50 miles from the transmitter site. OPP urges that the statutory bar be eliminated, and that the Commission amend its rules, perhaps subjecting such cross-ownership to certain restrictions (e.g., barring cross-ownership only within a station's Grade A contour, i.e., 30-40 miles from the transmitter site). OPP argues:

[A]llowing combinations between broadcasters and other media, as long as they did not decrease the competitiveness of local broadcast markets, could allow efficient use of programming and other resources. Hence, Congress should repeal the broadcast-cable crossownership prohibition and the Commission should eliminate its own prohibition, perhaps subject to certain conditions.<sup>31</sup>

MPAA strongly disagrees with this recommendation. It is difficult to imagine a regulatory change that could do more to "decrease the competitiveness of local broadcast markets." Broadcasters who today claim they cannot be assured of fair treatment by cable operators in the absence of must-carry and channel repositioning rules surely cannot expect any more fair treatment if the local cable system is co-owned with a local broadcast station.

The broadcast-cable cross-ownership rule helps to preserve diversity of ownership and viewpoints in local markets. The rule remains as essential as other current cross-ownership rules (e.g., newspaper-broadcast, newspaper-cable, TV-radio) for those purposes.

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<sup>31</sup> OPP Paper at 170-1.

On what public interest grounds the Commission should be any more willing to revisit the broadcast-cable bar than any of these other ownership restrictions is not at all clear.

The statute should not be changed, and the Commission's rules should remain as they are.

e. Duopoly Rule

The Commission's rules prohibit a single company from owning more than one broadcast TV station in a given market or in closely-neighboring markets (e.g., New York and Hartford/New Haven). OPP urges the Commission to relax its rules to permit common ownership of TV stations unless their Grade A contours overlap; OPP further recommends that the Commission consider eliminating the rule for unaffiliated UHF stations.

MPAA supports retention of the rule for much the same reason as it supports the broadcast-cable cross-ownership rule: maximum diversity of voices requires maximum diversity of ownership in local markets. There is no significant evidence that most individual commercial television stations cannot survive in local markets. The fact that, even in a soft market, such stations change hands at substantial multiples indicates that the medium is healthy.

While it is never a happy experience to see the occasional station go dark, this is much more the function of the fundamental economics of a particular broadcast market being unable to support an oversupply of broadcast stations. Rushing in to change the duopoly rule would do nothing to change those economics.

Moreover, if any one company were permitted to operate more than one station in a given market (or in immediately adjacent markets), with the probable cross-subsidies flowing from the stronger to the weaker station, the Commission would be putting remaining broadcast competitors in that market (or markets) -- particularly newer independents and affiliates of new networks -- at a distinct disadvantage.

In broadcast television, there is no hint that eliminating the duopoly rule will contribute to competition within local markets. On the contrary, the advantaged duopolist will likely be in a position to harm the smaller stations in the market. Moreover, in most markets, permitting one or more duopolists can significantly reduce the diversity of voices locally.

The Commission should take no action to modify the duopoly rule for television.

f. Multiple Ownership--"Rule of 12"

The Commission's rules prohibit a single company from owning more than 12 TV stations, or from owning TV stations with a collective potential over-the-air audience reach in excess of 25 percent, subject to certain exceptions for ownership of UHF stations and for minority ownership. OPP urges that the Commission eliminate the rule.

The Commission most recently reviewed and amended this rule in 1985. In comments during the various phases of that proceeding, MPAA strongly supported the retention of multiple ownership rules, particularly as they apply to the national broadcast networks. MPAA offered these views:

1. The three networks continue to dominate the television marketplace. Permitting them to own and control more stations would exacerbate that imbalance.
2. New competitive media have not significantly affected the networks' dominant position in prime-time.
3. If the networks are permitted to acquire more stations, they would use their huge financial resources and marketplace advantage to extend their ownership of the choicest stations, freezing other competitors out of key markets.

4. Network ownership of additional stations will decrease the public's opportunities to hear independent voices and receive diverse programming on their local stations.

5. Extending network influence over programming and expanding network ownership of TV stations will inhibit the formation of competitive networks by reducing the number of outlets available to independent program suppliers.

6. Greater network station ownership would foreclose independent program producers from the "window of opportunity" presented by affiliates. Because of different incentives, affiliates are willing to present non-network, first run programming in prime time as members of ad-hoc networks, while O&O's are not.

MPAA did support some relaxation of the [then] seven station limit for non-network group owners, recommending limits based on percentage of households reached nationally by a group owner (i.e., 25%). The Commission elected to ease the multiple ownership rules for all owners, network and non-network.

Even in 1985, under an avowedly "unregulatory" chairman, the FCC "recognized the need to proceed cautiously" in modifying its multiple ownership rules "in order to avoid rapid and immediate

restructuring of the broadcasting industry."<sup>32</sup> In fact, the additional "audience reach" cap was instituted on reconsideration as the Commission sought to guard against adverse consequences from "rapid expansion of group ownership."<sup>33</sup>

MPAA does not believe that these rules merit reconsideration at this time. The rule has only been changed very recently, and barely a handful of companies have approached either the total station limit or the total reach limit. The rule has not proven to be a barrier to the emergence of national networking or the development of alternative programming sources. The rule has contributed importantly to greater diversity in ownership, including minority ownership opportunities. The Commission itself has recently reaffirmed the validity of the rationale underlying this rule.<sup>34</sup> The rule is still needed, it is working, and it

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<sup>32</sup> Memorandum Opinion and Order on reconsideration in Gen. Dkt. No. 83-1009, 50 Fed. Reg. 4666, at para. 35. "We... recognized.. that the complete and abrupt elimination of our national multiple ownership rules might engender a precipitous and potentially disruptive restructuring of the broadcast industry." Id. at para. 2.

<sup>33</sup> Id. at para. 36.

<sup>34</sup> "Again and again in recent years the Commission has given priority to [the] diversity interest in ways that have led to accusations that efficiency or competition were impeded. The Commission's rules limiting the number of broadcast stations that can be held by one owner... are designed to encourage a diversity of voices, though these rules, arguably, may prevent owners from achieving economies of scope and scale." FISR Order at para. 14.

should not be disturbed.

### III. CONCLUSION

We all look forward to the day when barriers to entry are eliminated, when programmers can readily reach those who want to view their programs and not suffer from distribution bottlenecks, when the risks that flow from concentration of media outlets in a few hands no longer exist. That day is not yet here. To the extent that the OPP Paper suggests otherwise, it is simply a misapprehension of the state of the marketplace. Those of us who face that marketplace every day as programmers, distributors and syndicators understand this.

Were the Commission and the Congress to throw broadcasters the "life raft" that OPP recommends, competition would drown. "[P]rudent, balanced and incremental"<sup>35</sup> Commission action, coupled with aggressive and effective actions to stimulate competitive entry and to ensure that broadcasters are not deprived of the

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<sup>35</sup> The Commission used this apt phrase in describing the philosophy behind its recent refinement of the financial interest and syndication rules. FISR Order at para. 18.

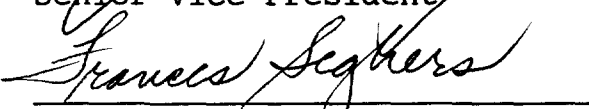
technological tools they need for a competitive future, will serve the public interest. "Convulsive regulatory change"<sup>36</sup> will not.

Respectfully submitted,

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